

**To: Information for the Freedom of Information, Open Meetings, and Public  
Records Study Committee**  
**From: Iowa Supreme Court**  
**Date: October 18, 2007**

### **I. Statement to the Committee**

For nearly a decade, the judicial branch has been planning and eagerly anticipating the implementation of electronic filing of court records and our transformation into a paperless court system. From the beginning of our planning process, we always envisioned that access to electronic court records that are not confidential by law would be widely available online. However, now that we have reached the advent of this transformation, the real prospect of wide open Internet access to court records and the potential negative ramifications of such access gives us pause. Court records routinely contain personal identifying information, as well as sensitive personal information, not only of litigants, but of witnesses, jurors, victims and others. While broad Internet access to court records will shine even more light on the vital work of Iowa's courts, which we wholeheartedly welcome and support, it will also place sensitive information about countless Iowans in the path of global voyeurs, and worse, identity thieves—an unwelcome by-product of the Internet that we cannot ignore and should not facilitate.

For these reasons, the court is reconsidering its earlier plan and proposed rules for access to electronic court records. We are now thinking of providing full public access to electronic court records that are not confidential through public access terminals located in clerk of court offices only. In addition, we would provide limited online access to certain registered users who need such records to conduct their court business such as litigants and attorneys, and to government officials who need certain court records to fulfill their statutory and constitutional functions. We believe these new parameters would strike a balance between our goals of providing convenient and open access to court records and our goals of promoting public safety and protecting personal privacy.

### **II. Proposals and Comments**

Last month, the committee asked the judicial branch to submit a list of court records and information in court records that should be deemed confidential by law. We greatly appreciate this opportunity for comment. Along with the preliminary list we have developed, we offer a number of other proposals and comments.

First, the court recommends that at a minimum all court records and information in court records currently deemed confidential by law, whether under chapter 22 or elsewhere in the Code, should continue to be confidential. If any such records or information have been omitted from the list below, such omission is unintentional. We simply did not have time for an exhaustive analysis.

This admission brings us to another proposal we would like the committee to consider. While we appreciate the committee's time and effort on this important public policy

question and think our preliminary list is a good starting point, we believe that the question of open records as it pertains to court records and information is a complex question that warrants a study unto itself. In addition, we believe it would be useful to bring the perspective of a broad-based group of stakeholders and public officials to bear on this question. Consequently, we encourage the interim committee to recommend further in-depth study of this question. The judicial branch stands ready to participate in a study of this nature.

As an alternate approach to a statutory list of confidential court records and information, we suggest that the legislature adopt a statute authorizing the supreme court to designate by rule the court records and information that are confidential. The law authorizing these court rules could include general policy considerations to guide the court's rule making. We believe that this subject is entirely appropriate for regulation by court rule. This approach would also give the court more time to study the question and time for public comment. If given such authority, the court would prefer to rely upon the insight and advice of a broad-based study committee as mentioned above; but again, this type of analysis would require more time and resources.

### **III. Preliminary List for Confidential Court Records**

#### **A. Cases for which records are excluded from public access (unless the supreme court by rule provides otherwise)**

- Delinquency except adjudication and subsequent orders
- Chapter 236 domestic abuse except for protective and contempt orders
- Mental health and substance abuse
- Waiver of abortion notification
- Child in need of assistance and termination of parental rights
- Adoption
- Paternity
- Expunged cases or cases sealed by court order
- Dissolutions and applications for modification of dissolution except final decrees, child support records, satisfaction of judgment, and contempt orders

#### **B. Documents and information excluded from public access (unless the supreme court by rule provides otherwise)**

- Deposited wills
- Deferred judgment record/database
- Genetic test information
- Drug/Alcohol treatment information, reports, evaluations
- Paternity tests
- HIV/AIDS tests
- Driver history reports
- Juror questionnaires
- Credit reports
- Medical and mental health information
- Psychological and intelligence test information
- Scholastic data on individuals

- Probation files
- Draft opinions, notes, internal memorandum
- Files/fields/codes regarding deliberative process
- Materials and exhibits that are dangerous, contraband or drugs
- Drugs
- Items the possession of which is illegal
- Presentence investigation reports
- Parenting plans
- Financial account statements and reports, and financial affidavits
- Income tax returns
- Reports by child and family investigators, guardian ad litem, etc.
- Certain child abuse reports
- Full names of children (except initials)
- Search warrants until returned
- Arrest warrants until served
- Minutes of testimony

#### IV. Requests for Data

We want to bring another issue to the committee's attention, which is: requests for data. The judicial branch routinely receives requests for data. These requests come primarily from the media for investigatory articles and from out-of-state private businesses that sell court data to third parties. Because the attorney general has advised the judicial branch that such requests are to be treated in the same manner as requests for other types of public records, the judicial branch provides the data. Per chapter 22, we provide the data for a fee, which is the hourly salary (not benefits) rate of the employees who work on the requests multiplied by the amount of time devoted to defining the request, designing and running the data extract program, and providing the data to the customer. A by-product of responding to such requests is that it requires us to divert our limited personnel resources to these nonjudicial projects at the expense of our core mission of serving the needs of Iowans for court services. We do not provide data that is confidential by law such as social security numbers and data from cases that are confidential. We routinely provide data regarding traffic, criminal and civil cases, the names, birth dates and addresses of litigants in these cases, and information about civil judgments and criminal fines, all of which are public record. Over time as our data collection efforts expand, we will have more types of information about individual Iowans that we must by law, as currently interpreted by the Attorney General, provide to any person, individual or corporation who requests the data and who can afford to pay for its extraction from the database.

We bring this subject to your attention not for the purpose of suggesting a particular change, but simply to recommend that you carefully consider the host of policy questions related to wide-scale access to data about individual Iowans collected and stored at taxpayer expense for the purpose of governing. For instance, with regard to data requests:

- Does the current law protect the privacy and security of private individuals?
- Does it provide for the effective and appropriate use of taxpayer resources?
- Does it support the role of government?
- Does it discourage individuals from using the courts to resolve their disputes?

## Section 4.30 -REQUESTS FOR BULK DISTRIBUTION OF COURT RECORDS

Bulk data, for purposes of this statement of/policy, is defined as the entire ICON/Eclipse database. It is defined also to include that subset of the entire database that remains after the extraction of all data that is confidential under law. It is the policy of the Judicial Branch that bulk data not be released to individuals, government agencies or private entities,

## Section 4.40 -ACCESS TO AGGREGATE AND COMPILED DATA FROM COURT RECORDS

### (a) Definitions

(1) "Compiled Data" means data that is derived from the selection or reformulation of specific data elements within the ICON/Eclipse database. It is a listing of individual court records that may contain the following data elements: case number (which may include court type, court location, case year, case class, case sequence); case filing date, judge and division assigned to the case; events, scheduled events and scheduled event status; case status; date of birth; sex; race; attorney assigned to a case; judgment amount ordered; summary financial information; arrest or offense date and arresting agency; charge, plea, and conviction information; and sentences. Compiled Data requests shall not contain any names of parties associated with a case,

(2) "Aggregate Data" means summary information extracted from Compiled Data that eliminates any case or party identifying information such as case numbers, case sequence fields, names, or EID numbers

(b) The Judicial Branch will supply Compiled Data and Aggregate Data to the public from the ICON/Eclipse database as provided in this section

(1) Compiled Data and Aggregate Data shall only be released by the State Court Administrator's Office or its designated agent. See Addendum A for application. This type of request is distinguishable from the Data Match requests mentioned in section 4.40(2) below,

(2) Compiled Data and Aggregate Data may be released as follows:

i In case classes: CR & F (Felony); M (Misdemeanor); T & R (Traffic); C, CV, CW, & S (Civil & Small Claims); and DR (Domestic Relations), data may be released as Compiled Data or . . . Aggregate Data,,

ii In case classes JD (,Juvenile Delinquency), JV (Juvenile - Non- Delinquency) and PR (Probate) data shall only be released as Aggregate Data,,

iii Probation data may only be released as Aggregate Data,,

(c) Any member of the public may request compiled data that consists solely of records that are publicly accessible and that are not already available pursuant to section 420 or in an existing report. The State Court Administrator's Office, may compile and provide the data if it determines, in its discretion, that providing the compiled data meets criteria established by the Public Access Committee, that the resources are available to compile the data, and that it is an appropriate use of public resources. The State Court Administrator may delegate to his/her staff the authority to make the initial determination as to whether to provide compiled data,,

(d) The State Court Administrator's Office will prioritize compiled data requests in the following manner: requests from within the Judicial Branch; requests from other agencies that are essential to complying with their statutory mandates; and, other requests including those from the media, businesses and private entities,,

(e) (1) Compiled data may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes Requests for on going reports via compiled data requests will be provided no more frequently than on a quarterly basis

(2) The request shall:

- (i) identify what compiled data is sought;
- (ii) describe the purpose for requesting the compiled data and explain how the compiled data will benefit the public interest or public education; and
- (iii) explain provisions for the secure protection of any compiled data requested to which public access is restricted or prohibited

(3) The State Court Administrator or his/her designee may grant the request and compile the data if he/she determines that doing so meets criteria established by the Public Access Committee and is consistent with the purposes of the access policy, the resources are available to compile the data, and that it is an appropriate use of public resources

(4) If the request is granted, the State Court Administrator or his/her designee may require the requestor to sign a declaration that:

- (i) the compiled data will not be sold or otherwise distributed, directly or indirectly, to third parties;
- (ii) the compiled data will not be used directly or indirectly to sell a product or service to an individual or the general public;
- (iii) there will be no copying or duplication of compiled data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose;
- (iv) the compiled data will not be made available on the Internet;
- (v) compiled data may be used for research purposes only; and

(vi) recipients of compiled data are required to sign an agreement that includes an acknowledgement of the recipient's responsibility for checking the accuracy of the compiled data and complying with the requirements of §24-72-305.5 CR.S. of the Criminal Justice Records Act. This provision prohibits the use of criminal justice records for the solicitation of business,,

(f) Data Matches: The media or other organizations may submit an electronic list of data that can be matched with the public criminal (felony, misdemeanor and traffic) data contained in ICON Eclipse (See Addendum B for application,)

(1) Pursuant to §24-33.5-412(6) CRS., the Colorado Bureau of Investigation is designated as the official repository for criminal history information. Therefore, data match requests will not be processed for specific individual background checks. Any attempt to compile a separate database (i.e., requesting a match of all criminal records) will be denied.

(2) All requests are subject to approval by the State Court Administrator or his/her designee. The State Court Administrator or his/her designee may grant the request and compile the data if he/she determines that doing so meets criteria established by the Public Access Committee and is consistent with the purposes of the access policy, the resources are available to compile the data, and that it is an appropriate use of public resources

(3) Match requests will be submitted to the Public Access Manager at the Office of the State Court Administrator. Upon receipt, the request will be logged and forwarded to appropriate personnel for processing. The following information will be chronicled in a register: person and/or organization submitting the request, contact person including name and telephone number, what data was provided for matching, and for what purpose the data was requested. The log should also be updated when the request is completed with the name of the programmer that ran the data, how long it took, and how much the requestor was charged

(4) Requests will be processed matching the submitted data to data contained in the libraries in ICON/Eclipse. Only records with positive matches (name and DOB) will be returned and an electronic list of matches will be provided to the requesting person or organization. Only data available in the criminal (felony; misdemeanor and traffic) libraries will be provided in the matched data,,

(5) The requestor will sign an agreement regarding the limits for the use of the matched data similar to the agreement referenced in 40(g)(4) above

- Does it maintain or undermine public safety?
- Does it make government more accountable?
- Does it advance the administration of justice?
- Does it advance the interests of private enterprise?
- Does it strengthen or undermine public trust and confidence in the court system?

We believe that this policy is for the legislature, not the court, to decide. As one example of policies governing access to court data, we have attached pertinent policies from the Colorado Judicial Branch.